IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 34509 of 2007(G)

PETITIONER:

NIGHTINGALE COLLEGE OF NURSING
GOVT.COLLEGE ROAD, NEDUMANGADU,PIN 605001,
THIRUVANANTHAPURAM REP.ITS MANAGER,A.RADHAKRISHNAN
NIGHTINGALE COLLEGE OF NURSING,GOVT.COLLEGE ROAD,
NEDUMANGADU,PIN 605001,THIRUVANANTHAPURAM.

BY ADV. SRI.ABRAHAM P.GEORGE
SMT.K.V.LEKSHMY

RESPONDENTS:

1. **THE ADMISSION SUPERVISORY COMMITTEE**
   FOR PROFESSIONAL COLLEGES,RAM MOHAN PALACE
   (OLD HIGH COURT BUILDING) HALL NO.8,
   ERNAKULAM REP. BY ITS MANAGER.

2. **ANUJA NAIR,NENMELIL AJAY BHAVAN,**
   PERINGARA P.O., PIN 689 108,
   THIRUVALLA, PATHANAMTHITTA.

3. **PRINCY SUSAN THOMAS,D/O.E.C.THOMAS**
   ERAKKATHIL HOUSE, VADAVATHUR P.O., KALATHILPADI
   KOTTAYAM-686 010.

4. **DEEPTHI BABU.S, ANEESH BHAVAN,**
   MUNDACKAL EAST, KOLLAM, PIN 691 001.

5. **ANASWARA P.,PANDIYALA HOUSE**
   PILASSERY P.O.,CALICUT, PIN 673 571.

6. **VIDYA K.S.,D/O.KUNJUKUNJU,KURUPPANPARAM**
   BIL HOUSE, ITHITHANAM,CHANGANASSERY,
   KOTTAYAM, PIN 686 535.

7. **SHIBIN T.M.,THAYYATT MEETHAL HOUSE**
   CHERUVANOOR P.O.,MEPPAYOOR, KOZHIKKODE PIN673 524.

8. **ANUSHA S., ANUPAMA NIVAS, MARU SOUTH**
   ALUMKADAVU P.O.,KARUNAGAPALLY, KOLLAM PIN 690 573

9. SABDHYA RAPHEL,KALLIKKADAN HOUSE
KODANNUUR P.O., THRISSUR DISTRICT, PIN 680 574.

10. SREEJA PRASAD, SANTHI VILASAM,
ARCHAL, NEDIYARA P.O., PIN 691 306.
KOLLAM DISTRICT.

11. JAMSHEENA E.M., EDAPATTA HOUSE
MAMPATTUMOOLA P.O., MALAPPURAM PIN 679 332.

12. JESEENA B, PUTHVALVILA VEEDU
NJAVELIKONAM, KILIMANOOR,
THIRUVANANTHAPURAM PIN 695 601.

13. SHAMEENA E.K. ERAKKOTTIL HOUSE
CHERUVAYOOR P.O., MALAPPURAM DISTRICT
PIN 673 645.

14. SREEDEVI K, KOLANGARA ILLAM,
GOKULAM HOUSE, VILAYIL P.O., MALAPPURAM DISTRICT.

15. SOUMYA A, ALUMKANDI HOUSE
CHERUVAYOOR P.O., VAZHAKKAD,
MALAPPURAM PIN 673 645.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007, ALONG WITH WPC NO. 34562 OF 2007 THE COURT ON 28/11/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) NO. 34509 & 34562 OF 2007

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Dated this the 28th day of November, 2007

J U D G M E N T

These writ petitions have been filed by the Management of Nightingale College of Nursing praying for quashing Ext.P3 orders issued by the 1st respondent.

2. Ext.P3 orders have been passed on a complaint filed by the students, who had initially joined the petitioner's college. After joining the college, the Commissioner for Entrance Examination reallotted these students to Government Nursing College and for that reason, they left the institution to join the new college. Since the petitioner retained the advance fee collected from the students, they approached the 1st respondent, which, after hearing the parties, issued Ext.P3 directing refund of the amount collected deducting the actual expenses incurred by the petitioner in respect of each student. It is this order, which is under challenge.

3. The learned counsel for the petitioner submits that 16 students left the institution on being reallotted by the Entrance Commissioner based on the higher options exercised by them.

According to the learned counsel in respect of these 16 students, since admission had to be cancelled, the petitioner is entitled to realise the liquidated damages as stipulated in Clause 12.2.4 of the prospectus, the relevant extract of which is Ext.P1. It is submitted that it is without taking this aspect of the matter into account that the 1st respondent has issued Ext.P3 order and directed refund of the amount.

4. It was submitted that 16 students after joining the institution discontinued the course and joined Government Nursing College following their re-allotment by Commissioner for Entrance Examination. On a query from the court, it was also submitted by the counsel for the petitioner that of the 16 vacancies thus created, except one, 15 have been filled up based on the subsequent allotments made by the Entrance Commissioner. It was also stated that the 16 students had left before the last date of cancellation of admission notified by the Commissioner for Entrance Examination.

5. Thus what emerges from the facts are that though 16 students left the college, there is effectively only one vacancy

created on account of this and that these students have left before the last date of cancellation of the admission. A reading of Ext.P1 shows that no refund of fee will be made to candidates, who apply for TC/cancellation of admission after the last date of cancellation of admission, notified by the Commissioner for Entrance Examination. It is also provided that such students will have to pay liquidated damages as stipulated in Clause 12.2.4.

6. In this case, first of all, these students have left on being reallotted by the Commissioner for Entrance Examination. In such a case, I am not prepared to accept the contention of the counsel for the petitioner that the students had discontinued the course rendering them liable for the penal consequences as provided in the prospectus.

7. Even otherwise, in terms of Clause 12.2.3, refund of fee can be denied only if the student leaves the institution after the last date of cancellation of admission notified by the Commissioner for Entrance Examination. It is such students, who are liable to pay liquidated damages. In this case, counsel submitted during the course of the arguments that these

students have left the institution before the last date notified for cancellation of admission. It is for that reason 15 students were again allotted to the petitioner's college. If that be so, Clause 12.2.3 does not apply at all.

8. For these reasons, I am not in agreement with the learned counsel for the writ petitioner that the students are liable for payment of liquidated damages. I see no error in Ext.P3 orders of the 1st respondent.

Writ petitions fail and are dismissed.

ANTONY DOMINIC, JUDGE.

Rp